

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JUSTIN M. BRAUN	:	CIVIL ACTION
	:	
v.	:	
	:	
SQUARE D COMPANY and	:	NO. 02-4001
ENGEL INDUSTRIES, INC.	:	JURY TRIAL DEMANDED

**TRIAL MEMORANDUM OF  
DEFENDANT ENGEL INDUSTRIES, INC.**

**A. EXHIBITS THAT MAY BE INTRODUCED DURING TRIAL**

1. Complaint
2. Injured Employees Report dated 4/19/01
3. Employer's Report of Occupational Injury or Disease (typed version)
4. Employer's Report of Occupational Injury or Disease (handwritten version)
5. Plaintiff's Tax Returns
6. Wage Information Sheet
7. Job Description Information dated 4/17/01
8. Statement of Wages
9. Records of Guard Insurance Group
10. Records of Sheet Metal Workers Local #19
11. Photograph of Bendall (as new)
12. Photos taken on 3/4/03
13. Photos taken on 7/7/2003
14. Photos produced by plaintiff
15. Photos produced by Square D Company
16. Photo List dated 7/23/01
17. Notes of James F. McElwee pertaining to inspection at Bohrer Reagan on 7/23/01
18. Brochure regarding Bendall Press Brakes produced by Bohrer-Reagan
19. Component/Service Documents/Parts List produced by Bohrer-Reagan Co.
20. Electrical/Lubrication Diagrams
21. Blueprint regarding 1010 Bendall
22. Bendall Adjustment Procedure Sheet
23. Engel Bendall Installation Instructions
24. Square D Company 81 AS Service Bulletin dated Nov. 1967
25. Square D Company Price Sheet, Class 9002, dated August 1970
26. Square D Company Drawing 2502-B21

- 27. Square D Company 81AS Service Bulletin dated Dec. 1975
- 28. Square D Company "New Sheet," Type AW Foot Switches with Oversize Guard and Side Shields dated December, 1966
- 29. Square D Company Application Data dated Aug. 1970
- 30. Square D Company Catalog Digest, April 1967
- 31. Square D Company Descriptive Sheet, Class 9002, dated July 1964
- 32. Blueprints for Class 9002 foot switch
- 33. "New Heavy-Duty Foot Switch" document
- 34. Square D Company Product Engineering Documents
- 35. Boots worn by Justin Braun
- 36. Photographs of boots
- 37. Outline of boots
- 38. Records of SMW JATC Training Center
- 39. Records/Letter of Brown's Heating & A/C, Inc.
- 40. Bendall Brochure
- 41. Purchase Order dated 3/31/69
- 42. Purchase Order dated 3/28/69
- 43. Shipping record dated 7/11/69
- 44. Engel Bendall Installation Instructions
- 45. Manual Ram Adjustments
- 46. Motor Protection Chart
- 47. Drawing EBA 1165
- 48. Lubrication Requirements
- 49. Instructions for Operating Engel Bendall Tools
- 50. Square D Company 81AS Service Bulletin dated April, 1964
- 51. Blueprints regarding Bendall Press Brake
- 52. Records of Conrad Weiser School
- 53. Records of BNB Mechanical
- 54. ANSI B11.3 (1973)
- 55. ANSI B11.3 (1982)
- 56. ANSI B11.3 (1994)
- 57. NIOSH Current Intelligence Bulletin dated 5/22/97
- 58. Accident Prevention Manual, National Safety Counsel, 9<sup>th</sup> Ed. 1988
- 59. OSHA regulation 29 CFR 1910.212
- 60. OSHA website pages pertaining to point-of-operation and/or powered press brakes
- 61. All documents referenced in report of Jack Krafchick, P.E.
- 62. All documents referenced in report of Jasen Walker, Ed.D.
- 63. Raw test data from evaluation performed by Jasen Walker, Ed.D. on 6/2/03
- 64. *Curriculum Vitae* of Jack Krafchick, P.E.
- 65. *Curriculum Vitae* of Jasen Walker, E.D.
- 66. Records of Thomas Jefferson University Hospital
- 67. Records of Stephanie Sweet, M.D.
- 68. Records of The Philadelphia Hand Center

69. Pennsylvania EMS Report
70. Records of The Reading Hospital and Medical Center
71. Records of West Radiology Associates
72. Records of Berks Hand Therapy Center
73. Records of Pennsylvania Office of Vocational Rehabilitation
74. Plaintiff's Responses to Interrogatories
75. Plaintiff's Responses to Request for Production of Documents
76. Square D's Responses to Interrogatories
77. Square D's Responses to Request for Admissions
78. Square D's Responses to Request for Production of Documents
79. Video demonstrating operation of Bendall press brake
80. Enlargements of exhibits and other demonstrative evidence
81. All documents produced by plaintiff
82. All documents produced by Square D Company
83. All deposition exhibits
84. All exhibits identified on Plaintiff's Pretrial Memorandum
85. All exhibits identified on Square D Company's Pretrial Memorandum

Defendant reserves the right to supplement this list.

**B. POTENTIAL EXPERT WITNESSES**

1. Jack Krafchick, P.E.  
1415 Appleberry Way  
West Chester, PA 19382

Will provide expert testimony in the fields of mechanical engineering, machinery design and operation, OSHA and other industry codes, industrial safety and accident analysis.

2. Jasen M. Walker, Ed.D., C.R.C., C.C.M.  
CEC Associates, Inc.  
1220 Valley Forge Road, Unit 9  
P. O. Box 911  
Valley Forge, PA 19482-0511

Will provide expert testimony in the fields of vocational/disability evaluation and testing and vocational rehabilitation.

**C. CURRICULUM VITAE FOR EACH EXPERT WITNESS**

See expert report and *curriculum vitae* for Jack Krafchick, P.E. attached hereto as Exhibit "A" and expert reports and *curriculum vitae* for Jasen Walker, Ed.D. attached hereto as Exhibit "B."

**D. POTENTIAL FACT WITNESSES**

1. Justin Braun  
1346 West Wyomissing Boulevard  
West Lawn, PA

Testimony pertaining to accident and injuries.

2. Mike Reagan  
Bohrer Reagan Company  
307 June Avenue  
Excelsior Industrial Park  
Blandon, PA 19510

Testimony pertaining to employee training, history of products at issue, operation of products at issue, safety guidelines and practices and plaintiff's accident.

3. Bob Ashman  
Bohrer Reagan Company  
307 June Avenue  
Excelsior Industrial Park  
Blandon, PA 19510

Testimony pertaining to employee training, history of products at issue, operation of products at issue, safety guidelines and practices and plaintiff's accident.

4. Mr. Herb Fischer  
Engel Industries, Inc.  
8122 Reilly Avenue  
St. Louis, MO 63111

Testimony regarding sale of Bendall press brake, operation of press brake, historical information regarding press brake and design of brake press.

5. Alan Ried  
17818 Southeast 86<sup>th</sup> Oakleaf Terrace  
The Villages, FL 32162

Testimony regarding design and operation of press brake.

6. Robert Bova  
812 North Tenth Street  
Reading, PA

Testimony regarding plaintiff's accident and employee training at Bohrer-Reagan.

7. James McElwee  
Square D Company  
P.O. Box 27446  
Raleigh, NC 27611-7446

Testimony regarding history and sales of foot switches.

8. Stephanie Sweet, M.D.  
834 Chestnut Street  
Suite G114  
Philadelphia, PA 19107

Testimony regarding plaintiff's injuries and current condition.

9. Records Custodians for all records identified in section A, if necessary.
10. All physicians/medical providers identified in medical records to testify regarding treatment and medical condition.
11. Any and all witnesses identified in plaintiff's Pretrial Memorandum.
12. Any and all witnesses identified in Square D Company's Pretrial Memorandum.

Defendant reserves the right to supplement this list.

#### **E. DAMAGES**

To be provided by plaintiff.

## F. LEGAL OR PROCEDURAL ISSUES

1. Defendant Engel Industries, Inc. has filed a Motion for Partial summary judgment seeking: (1) the dismissal of plaintiff's negligence and strict liability claims based on an alleged failure to warn; and, alternatively, (2) the dismissal of plaintiff's strict liability claim premised on a failure to warn since Engel Industries did not manufacture or sell the foot pedal that allegedly necessitated a warning.<sup>1</sup>

2. Defendant Engel Industries has filed a Motion *In Limine* to preclude plaintiff's liability experts from: (1) offering the opinion that "Braun's actions were reasonable," or (2) offering any opinions regarding an alleged need for point-of-operation guards.

3. At the time of trial, this Court must make a determination as to whether Pennsylvania, as a matter of social policy, would place liability on the manufacturer; that is, whether the risk of loss should be born by the manufacturer as opposed to the consumer. See Dambacher v. Mallis, 366 Pa. Super. 22, 485 A.2d 408, 420-21 (1984), appeal dismissed, 408 Pa. 543, 500 A.2d 428 (1985) (citations omitted); see also, Nowak v. Faberge USA Inc., 32 F.3d 755; 757 (3d Cir. 1994). The law of Pennsylvania requires that the Court, not the jury, decides the threshold question of whether a product is "unreasonably dangerous." Azzarello v. Black Bros. Co., Inc., 480 Pa. 547, 391 A.2d 1020, 1026 (1978).

4. Defendant Engel Industries, Inc. believes that plaintiff's strict liability claims are defeated by the application of Section 452(2) of the Restatement (Second) of Torts which provides that a third person's failure to prevent harm becomes a superseding cause:

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<sup>1</sup> In its Motion for Summary Judgment, Engel Industries, Inc. also asked this Court to dismiss plaintiff's breach of warranty claims. However, plaintiff recently advised this Court that he will proceed solely on a strict products liability claim. Therefore, defendant's Motion for Summary Judgment as to the breach of warranty claims should be granted as unopposed.

where, because of lapse of time or otherwise, the duty to prevent harm to another threatened by the actor's negligent conduct is found to have shifted from the actor to a third person.

Restatement (Second) of Torts §452(s); see e.g. Meuller v. Jeffrey Manufacturing Co., 494 F.Supp. 275 (1980). In this case, the Bendall press brake was sold to plaintiff's employer approximately 32 years before the accident and, during that 32 year span, ANSI and OSHA established standards that require **employers** to protect personnel from point-of-operation hazards. Therefore, plaintiff's strict liability claims against Engel Industries are superceded based on the obligations/duties of plaintiff's employer, Bohrer-Reagan Company.

#### **G. NAMES AND ADDRESSES OF PARTIES**

Justin Braun  
1346 West Wyomissing Boulevard  
West Lawn, PA

Engel Industries, Inc.  
8122 Reilly Avenue  
St. Louis, MO 63111

Square D Company  
P.O. Box 27446  
Raleigh, NC 27611-7446

#### **H. TRIAL COUNSEL**

Thomas P. Wagner, Esquire  
Michael P. Zipfel, Esquire  
Rawle & Henderson  
One S. Broad Street  
The Widener Building  
Philadelphia, PA 19107

**I. PROPOSED VOIR DIRE QUESTIONS**

See proposed questions attached hereto Exhibit "C."

**J. PROPOSED VERDICT SLIP**

A proposed verdict slip cannot be formulated properly until decisions have been rendered regarding the pending Motions for Summary Judgment and the pending Motions *In Limine* and the parties have submitted points for charge to the Court. However, a preliminary draft of a Verdict Slip is attached hereto as Exhibit "D."

**K. OTHER MATTERS OF IMPORTANCE**

None at this time.

RAWLE & HENDERSON LLP

By: \_\_\_\_\_

Michael P. Zipfel, Esquire  
Identification No. 57303  
The Widener Building  
One S. Broad Street  
Philadelphia, PA 19107  
Attorneys for defendant,  
Engel Industries, Inc.

Dated: August 15, 2003

CERTIFICATE OF SERVICE

I, Michael P. Zipfel do hereby certify that a copy of the foregoing Trial Memorandum of Defendant Engel Industries, Inc. was sent via first class mail, postage pre-paid on August 15, 2003 to the following:

Peter F. Schuchman, Jr., Esquire  
Kozloff & Stoudt  
2640 Westview Drive  
PO Box 6286  
Wyomissing, PA 19610

W. Matthew Reber, Esquire  
Kelley, Jasons, McGuire & Spinelli  
Suite 1500, Centre Square West  
1500 Market Street  
Philadelphia, PA 19102

RAWLE & HENDERSON, LLP

By: \_\_\_\_\_

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